

ARTICLE III NONCONFORMING PROVISIONS

3.1 - PURPOSE

Within the districts established by this Code or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Code was passed or amended, but which would be prohibited or restricted under the terms of this Code or future amendment. It is the purpose of this Code to permit these nonconformities to continue until they are removed, discontinued, or abandoned. It is further the purpose of this Code that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district, except as permitted by the Code of Tennessee.

3.2 – APPLICABILITY

A use, otherwise in accordance with the provisions of this Code, shall not be deemed a nonconforming use for a failure to comply with the provisions of this Code relating to any of the following:

- 3.2.1 Changes in review procedures or setback requirements applicable to the establishment of the use;
- 3.2.2 Permitted signs;
- 3.2.3 Off-street parking requirements; or
- 3.2.4 A lawfully permitted use shall not become a nonconforming use solely because it subsequently violates any use limitation or distance requirement, whether through changes to this Code or because new uses are established closer than what is lawfully permitted under this Code.

3.3 - NONCONFORMING USES

A nonconforming use is declared by this Code to be a use which is not permitted in the district in which it is located and which is in continuous operation after the effective date of such ordinance even though it does not comply with the use regulations applicable to the zoning district in which it is located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Code by the addition of other uses of a nature which would be prohibited in the district involved.

3.3.1 LIMITATION ON EXPANSION

Provided it continues to comply with all provisions of the city's Zoning Ordinance, any nonconforming use may continue to operate and expand on the same land area/parcel containing the nonconforming use on the date the use first became nonconforming. A nonconforming use shall not expand upon any land area/parcel that was not part of the original property at the time the use first became nonconforming.

3.3.1.1 STRUCTURAL ALTERATIONS

- A. Any nonconforming use of a structure or structure and land in combination may as special exception be changed to another nonconforming use, provided the Board of Zoning Appeals finds that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with the provisions of this Code.
- B. All off-street parking operated by, in conjunction with, or accessory to a nonconforming use shall be maintained in accordance with all specifications for maintenance of off-street parking spaces as established by the Code. Required off-street parking space for a nonconforming use shall not be reduced in any manner or used for storage or display of materials or goods.
- C. Multifamily residential establishments (whether used as owner-occupied property or rental property) which were permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to reconstruct new facilities necessary to the conduct of such multifamily residential establishment subsequent to the zoning change, in the event of damage (whether partial or complete) by involuntary fire or wind damage or other natural disaster.
- D. The provisions of this section shall not apply to a legally established nonconforming manufactured home provided:
 - 1. That written notification of intent to replace the manufactured home and the proposed date of replacement of is filed with the Chief Building Official within ninety (90) days of the manufactured home's removal;
 - 2. That the manufactured home is replaced within one-hundred and eighty (180) days of the removal of the previous manufactured home;
 - 3. That the replacement manufactured home is of structural quality at the date of filing of the notice with the Chief Building Official, equal to or

exceeding that of the previous manufactured home, in the opinion of the Chief Building Official; and

4. That the replacement manufactured home meets the area and yard requirements of the district in which it is located.

E. Nonconforming structures resulting from the passage of Sections 6.28, 6.30 and 6.31 may expand, renovate, alter, remodel, or reconstruct without conformance to the Development Standards set forth in Sections 6.28.3, 6.30.3 and 6.31.3, providing the nonconforming structures do not expand upon any land area/parcel that was not part of the original property at the time the structures first became nonconforming. The provisions contained in Section 3.4 are still applicable regarding structures that are removed, destroyed, or damaged.

3.4 – TERMINATION OF NONCONFORMING USES

- 3.4.1 Should a nonconforming structure or a nonconforming portion of a structure be removed or destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at time of damage, it shall not be reconstructed except in conformity with the provisions of this Code, provided, however, that the right to maintain a nonconforming detached single-family residence in a residential or nonresidential district shall not be terminated regardless of the amount of damage.
- 3.4.2 Subject to all other regulations of this Code, a building damaged by fire, explosion or other casualty, act of God, or government action to the extent of not more than fifty (50) percent of its replacement cost at time of damage, may be restored and the occupancy or use of such building or part thereof which existed at the time of such destruction may be continued, providing restoration shall begin within one-hundred and eighty (180) days of the date of damage.
- 3.4.3 When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for twelve (12) consecutive months, the structure, or structures and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. This provision shall not apply when government action impedes access to the premises or when the owner can demonstrate that an attempt has been made to continue the nonconforming status through continuous advertisement for sale, rent, or lease, or through alteration or remodeling, provided a building permit has been obtained.
- 3.4.4 Changing any nonconforming use to a conforming use shall terminate the nonconforming use and the nonconforming use shall not be reestablished.
- 3.4.5 Any one of the following violations of this Code shall terminate immediately the right to operate a nonconforming use:

- 3.4.5.1 Failure to make a nonconforming use comply with local, state, or federal regulations which results in negative health or safety impacts;
 - 3.4.5.2 Increasing the number of dwelling units in the nonconforming use; or
 - 3.4.5.3 Changing a nonconforming use to another nonconforming use without approval from the Board of Zoning Appeals.
- 3.4.6 The right to operate and maintain any nonconforming use shall terminate and shall cease to exist whenever the structure containing said use deteriorates to the point it becomes obsolete or substandard under the Code of Ordinances for Johnson City and the cost of placing such structure in compliance exceeds fifty (50) percent of the replacement cost of the structure as determined by the Chief Building Official; provided that in determining the replacement cost, the cost of the land shall not be included.
- 3.4.7 The reconstruction or reestablishment of all or any part of a nonconforming use shall not be permitted whenever the structure in which the nonconforming use is operated and maintained has been intentionally demolished, damaged, or destroyed.

3.5 - NONCONFORMING LOTS

A nonconforming lot shall be any lot, the dimensions or location of which were lawful prior to the adoption or amendment of this Code, but which fails by reason of such adoption or amendment to conform to the present requirements of this Code. Such lot is classified as a "legal lot of record".

- 3.5.1 A nonconforming lot shall be used only for a permitted use or special exception in the zoning district in which the lot is located.
- 3.5.2 Development or establishment of such use shall comply with all applicable standards for that zoning district, except compliance with existing minimum lot area standards is not required.
- 3.5.3 A nonconforming lot shall not be used, conveyed, transferred, subdivided, nor have its boundaries altered in any manner, except for government purpose, that would compound or further increase the nonconforming characteristics of the lot.
- 3.5.4 In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Code, notwithstanding limitations imposed by other provisions of this Code. Such lot

shall be in separate ownership and not of continuous frontage with other lots in the same ownership.

- 3.5.5 If two or more lots or combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Code, and if the lots do not meet the requirements of a fifty (50) foot lot width at the building line and six-thousand (6,000) square feet of land area, the lands involved shall be considered to be an undivided parcel for the purpose of this Code and shall be platted together to create lots with a minimum of six-thousand (6,000) square feet with a minimum lot width of fifty (50) feet regardless of the zoning prior to a building permit being issued. During the platting process, no lot remnants will be created or remain which have a lot area of less than six-thousand (6,000) square feet and a lot width of less than fifty (50) feet.

3.6 - SPECIAL EXCEPTIONS

Any use which is permitted as a special exception in a district under the terms of this Code (other than a change through the Board of Zoning Appeals from one nonconforming use to another nonconforming use not permitted in the district) shall not be classified as a nonconforming use in such district, but shall without further action be considered a conforming use.